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Honorable Robert S. Lasnik

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AT SEATTLE
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WESTERN DISTRICT OF WASHINGTON
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11 UNITED STATES DISTRICT COURT FOR THE
12 WESTERN DISTRICT OF WASHINGTON
13 AT SEATTLE

14 UNITED STATES OF AMERICA,
15 Plaintiff,
16 v.
17 LOREASA JOSEPH MISIPATI,
18 Defendant.

NO. CR20-00002RSL

PLEA AGREEMENT

18 The United States of America, by and through Brian T. Moran, United States
19 Attorney for the Western District of Washington, and Thomas Woods, Assistant United
20 States Attorney for said District, Defendant LOREASA JOSEPH MISIPATI, and
21 Defendant's attorney, Thomas Hillier, enter into the following Agreement, pursuant to
22 Federal Rule of Criminal Procedure 11(c)(1)(B).

23 1. **Waiver of Indictment.** Defendant, having been advised of the right to be
24 charged by Indictment, agrees to waive that right and enter a plea of guilty to the charge
25 brought by the United States Attorney in an Information.

26 2. **The Charge.** Defendant, having been advised of the right to have this
27 matter tried before a jury, agrees to waive that right and enters a plea of guilty to the
28 following charge contained in the Information.

1 a. Felon in Possession of a Firearm, as charged in Count 1, in violation
 2 of Title 18, United States Code, Section 922(g).

3 By entering a plea of guilty, Defendant hereby waives all objections to the form of
 4 the charging document. Defendant further understands that before entering any guilty
 5 plea, Defendant will be placed under oath. Any statement given by Defendant under oath
 6 may be used by the United States in a prosecution for perjury or false statement.

7 **3. Elements of the Offense.** The elements of the offense to which Defendant
 8 is pleading guilty are as follows:

9 a. The elements of being a Felon in Possession of a Firearm, as charged
 10 in Count 1, are as follows:

11 *First*, the defendant knowingly possessed a firearm; (H)

12 *Second*, the ammunition had been shipped or transported from one state to
 13 another, or between a foreign nation and the United States; and (T) LM

14 *Third*, at the time the defendant possessed the ammunition, the defendant
 15 knew that he had previously been convicted of a crime punishable by imprisonment for a
 16 term exceeding one year.

17 **4. The Penalties.** Defendant understands that the statutory penalties
 18 applicable to the offense to which Defendant is pleading guilty are as follows:

19 a. For the offense of Felon in Possession of a Firearm, as charged in
 20 Count 1: A maximum term of imprisonment of up to 10 years, a fine of up to \$250,000, a
 21 period of supervision following release from prison of up to three years, and a mandatory
 22 special assessment of \$100 dollars. If a probationary sentence is imposed, the probation
 23 period can be for up to five (5) years.

24 Defendant understands that supervised release is a period of time following
 25 imprisonment during which Defendant will be subject to certain restrictive conditions and
 26 requirements. Defendant further understands that, if supervised release is imposed and
 27 Defendant violates one or more of the conditions or requirements, Defendant could be
 28 returned to prison for all or part of the term of supervised release that was originally

1 imposed. This could result in Defendant serving a total term of imprisonment greater
2 than the statutory maximum stated above.

3 Defendant understands that as a part of any sentence, in addition to any term of
4 imprisonment and/or fine that is imposed, the Court may order Defendant to pay
5 restitution to any victim of the offense, as required by law.

6 Defendant further understands that the consequences of pleading guilty may
7 include the forfeiture of certain property, either as a part of the sentence imposed by the
8 Court, or as a result of civil judicial or administrative process.

9 Defendant agrees that any monetary penalty the Court imposes, including the
10 special assessment, fine, costs, or restitution, is due and payable immediately and further
11 agrees to submit a completed Financial Statement of Debtor form as requested by the
12 United States Attorney's Office.

13 **5. Immigration Consequences.** Defendant recognizes that pleading guilty
14 may have consequences with respect to Defendant's immigration status if Defendant is
15 not a citizen of the United States. Under federal law, a broad range of crimes are grounds
16 for removal, and some offenses make removal from the United States presumptively
17 mandatory. Removal and other immigration consequences are the subject of a separate
18 proceeding, and Defendant understands that no one, including Defendant's attorney and
19 the Court, can predict with certainty the effect of a guilty plea on immigration status.
20 Defendant nevertheless affirms that Defendant wants to plead guilty regardless of any
21 immigration consequences that Defendant's guilty plea may entail, even if the
22 consequence is Defendant's mandatory removal from the United States.

23 **6. Rights Waived by Pleading Guilty.** Defendant understands that by
24 pleading guilty, Defendant knowingly and voluntarily waives the following rights:

- 25 a. The right to plead not guilty and to persist in a plea of not guilty;
26 b. The right to a speedy and public trial before a jury of Defendant's
27 peers;

- 1 c. The right to the effective assistance of counsel at trial, including, if
- 2 Defendant could not afford an attorney, the right to have the Court
- 3 appoint one for Defendant;
- 4 d. The right to be presumed innocent until guilt has been established
- 5 beyond a reasonable doubt at trial;
- 6 e. The right to confront and cross-examine witnesses against Defendant
- 7 at trial;
- 8 f. The right to compel or subpoena witnesses to appear on Defendant's
- 9 behalf at trial;
- 10 g. The right to testify or to remain silent at trial, at which trial such
- 11 silence could not be used against Defendant; and
- 12 h. The right to appeal a finding of guilt or any pretrial rulings.

13 7. **United States Sentencing Guidelines.** Defendant understands and
14 acknowledges that the Court must consider the sentencing range calculated under the
15 United States Sentencing Guidelines and possible departures under the Sentencing
16 Guidelines together with the other factors set forth in Title 18, United States Code,
17 Section 3553(a), including: (1) the nature and circumstances of the offense; (2) the
18 history and characteristics of Defendant; (3) the need for the sentence to reflect the
19 seriousness of the offense, to promote respect for the law, and to provide just punishment
20 for the offense; (4) the need for the sentence to afford adequate deterrence to criminal
21 conduct; (5) the need for the sentence to protect the public from further crimes of
22 Defendant; (6) the need to provide Defendant with educational and vocational training,
23 medical care, or other correctional treatment in the most effective manner; (7) the kinds
24 of sentences available; (8) the need to provide restitution to victims; and (9) the need to
25 avoid unwarranted sentence disparity among defendants involved in similar conduct who
26 have similar records. Accordingly, Defendant understands and acknowledges that:

27 a. The Court will determine Defendant's Sentencing Guidelines range
28 at the time of sentencing;

1 b. After consideration of the Sentencing Guidelines and the factors in
2 18 U.S.C. 3553(a), the Court may impose any sentence authorized by law, up to the
3 maximum term authorized by law;

4 c. The Court is not bound by any recommendation regarding the
5 sentence to be imposed, or by any calculation or estimation of the Sentencing Guidelines
6 range offered by the parties or the United States Probation Department, or by any
7 stipulations or agreements between the parties in this Plea Agreement; and

8 d. Defendant may not withdraw a guilty plea solely because of the
9 sentence imposed by the Court.

10 8. **Ultimate Sentence.** Defendant acknowledges that no one has promised or
11 guaranteed what sentence the Court will impose.

12 9. **Statement of Facts.** The parties agree on the following facts. Defendant
13 admits Defendant is guilty of the charged offense or offenses:

14 a. On April 24, 2019, King County Sheriff's deputies contacted
15 LOREASA JOSEPH MISIPATI. Officers recovered a bullet from MISIPATI's pocket.
16 Officers then searched MISIPATI's car, and recovered the following firearms, which he
17 possessed: a loaded Sturm, Ruger & Co. .40 caliber pistol, model SR40, a loaded Forjas
18 Taurus S.A. .45 caliber pistol, model PT 945, and a Bryco Arms .22 caliber pistol, model
J22. Officers also located approximately 97 grams of heroin from the car, which
MISIPATI also possessed.

19 b. Officers also searched a purse belonging to a woman who was with
20 MISIPATI. Officers recovered from the purse two .32 caliber Autauga MK II pistols.
21 MISIPATI possessed these firearms as well.

22 c. All of the firearms described above were manufactured outside of
23 the State of Washington and therefore had traveled in interstate commerce.

24 d. At the time LOREASA JOSEPH MISIPATI possessed the firearms
25 identified above, he knew he had been convicted of the following crimes: (1) Unlawful
26 Possession of a Firearm First Degree, Superior Court of Washington for King County,
27 cause number 15-1-05022-9 KNT, dated December 18, 2015; (2) Attempting to Elude a
28 Pursuing Police Vehicle, Superior Court of Washington for King County, cause number
15-1-05022-9 KNT, dated December 18, 2015; and (3) Unlawful Possession of a Firearm
First Degree, Superior Court of Washington for King County, cause number 15-1-03715-

1 0 KNT, dated December 18, 2015. As MISIPATI knew, he had been sentenced in excess
2 of a year for each of these crimes.

3 The parties agree that the Court may consider additional facts contained in the
4 Presentence Report (subject to standard objections by the parties) and/or that may be
5 presented by the United States or Defendant at the time of sentencing, and that the factual
6 statement contained herein is not intended to limit the facts that the parties may present to
7 the Court at the time of sentencing.

8 **10. Sentencing Factors.** The parties agree that the following Sentencing
9 Guidelines provisions apply to this case:

- 10 a. A base offense level of 14, pursuant to section 2K2.1(a)(6);
11 b. A two-level increase because the defendant possessed between three and
12 seven firearms, pursuant to section 2K2.1(b)(1)(A);
13 c. A four-level increase because the defendant possessed a firearm in
14 connection with a felony, pursuant to section 2K2.1(b)(6).

15 The parties agree they are free to present arguments regarding the applicability of
16 all other provisions of the United States Sentencing Guidelines. Defendant understands,
17 however, that at the time of sentencing, the Court is free to reject these stipulated
18 adjustments, and is further free to apply additional downward or upward adjustments in
19 determining Defendant's Sentencing Guidelines range.

20 **11. Acceptance of Responsibility.** At sentencing, if the Court concludes
21 Defendant qualifies for a downward adjustment acceptance for acceptance of
22 responsibility pursuant to USSG § 3E1.1(a) and Defendant's offense level is 16 or
23 greater, the United States will make the motion necessary to permit the Court to decrease
24 the total offense level by three (3) levels pursuant to USSG §§ 3E1.1(a) and (b), because
25 Defendant has assisted the United States by timely notifying the United States of
26 Defendant's intention to plead guilty, thereby permitting the United States to avoid
27 preparing for trial and permitting the Court to allocate its resources efficiently.

1 **12. Recommendation Regarding Imprisonment.** At sentencing, the
 2 government will recommend a sentence of thirty-six months to run concurrent to the state
 3 sentence he was serving at the time he first appeared in this matter. Defendant is free to
 4 recommend any term. Defendant understands that the parties' recommendations are not
 5 binding on the Court and the Court may reject the recommendation of the parties and
 6 may impose any term of imprisonment up to the statutory maximum penalty authorized
 7 by law. Defendant further understands that Defendant cannot withdraw a guilty plea
 8 simply because of the sentence imposed by the Court. Except as otherwise provided in
 9 this Plea Agreement, the parties are free to present arguments regarding any other aspect
 10 of sentencing.

11 **13. Abandonment of Contraband.** Defendant also agrees that, if any federal
 12 law enforcement agency seized any illegal contraband that was in Defendant's direct or
 13 indirect control, Defendant consents to the federal administrative disposition, official use,
 14 and/or destruction of that contraband.

15 **14. Non-Prosecution of Additional Offenses.** As part of this Plea Agreement,
 16 the United States Attorney's Office for the Western District of Washington agrees not to
 17 prosecute Defendant for any additional offenses known to it as of the time of this Plea
 18 Agreement based upon evidence in its possession at this time, and that arise out of the
 19 conduct giving rise to this investigation. In this regard, Defendant recognizes the United
 20 States has agreed not to prosecute all of the criminal charges the evidence establishes
 21 were committed by Defendant solely because of the promises made by Defendant in this
 22 Plea Agreement. Defendant agrees, however, that for purposes of preparing the
 23 Presentence Report, the United States Attorney's Office will provide the United States
 24 Probation Office with evidence of all conduct committed by Defendant.

25 Defendant agrees that any charges to be dismissed before or at the time of
 26 sentencing were substantially justified in light of the evidence available to the United
 27 States, were not vexatious, frivolous or taken in bad faith, and do not provide Defendant
 28

1 with a basis for any future claims under the "Hyde Amendment," Pub. L. No. 105-119
 2 (1997).

3 **15. Breach, Waiver, and Post-Plea Conduct.** Defendant agrees that, if
 4 Defendant breaches this Plea Agreement, the United States may withdraw from this Plea
 5 Agreement and Defendant may be prosecuted for all offenses for which the United States
 6 has evidence. Defendant agrees not to oppose any steps taken by the United States to
 7 nullify this Plea Agreement, including the filing of a motion to withdraw from the Plea
 8 Agreement. Defendant also agrees that, if Defendant is in breach of this Plea Agreement,
 9 Defendant has waived any objection to the re-institution of any charges that previously
 10 were dismissed or any additional charges that had not been prosecuted.

11 Defendant further understands that if, after the date of this Agreement, Defendant
 12 should engage in illegal conduct, or conduct that violates any conditions of release or the
 13 conditions of confinement (examples of which include, but are not limited to, obstruction
 14 of justice, failure to appear for a court proceeding, criminal conduct while pending
 15 sentencing, and false statements to law enforcement agents, the Pretrial Services Officer,
 16 Probation Officer, or Court), the United States is free under this Plea Agreement to file
 17 additional charges against Defendant or to seek a sentence that takes such conduct into
 18 consideration by requesting the Court to apply additional adjustments or enhancements in
 19 its Sentencing Guidelines calculations in order to increase the applicable advisory
 20 Guidelines range, and/or by seeking an upward departure or variance from the calculated
 21 advisory Guidelines range. Under these circumstances, the United States is free to seek
 22 such adjustments, enhancements, departures, and/or variances even if otherwise
 23 precluded by the terms of the Plea Agreement.

24 **16. Waiver of Appellate Rights and Rights to Collateral Attacks.**
 25 Defendant acknowledges that, by entering the guilty plea required by this plea agreement,
 26 Defendant waives all rights to appeal from Defendant's conviction and any pretrial
 27 rulings of the Court. Defendant further agrees that, provided the Court imposes a
 28 custodial sentence that is within or below the Sentencing Guidelines range (or the

1 statutory mandatory minimum, if greater than the Guidelines range) as determined by the
2 Court at the time of sentencing, Defendant waives to the full extent of the law:

3 a. Any right conferred by Title 18, United States Code, Section 3742,
4 to challenge, on direct appeal, the sentence imposed by the Court, including any fine,
5 restitution order, probation or supervised release conditions, or forfeiture order (if
6 applicable); and

7 b. Any right to bring a collateral attack against the conviction and
8 sentence, including any restitution order imposed, except as it may relate to the
9 effectiveness of legal representation; and

10 This waiver does not preclude Defendant from bringing an appropriate motion
11 pursuant to 28 U.S.C. § 2241, to address the conditions of Defendant's confinement or
12 the decisions of the Bureau of Prisons regarding the execution of Defendant's sentence.

13 If Defendant breaches this Plea Agreement at any time by appealing or collaterally
14 attacking (except as to effectiveness of legal representation) the conviction or sentence in
15 any way, the United States may prosecute Defendant for any counts, including those with
16 mandatory minimum sentences, that were dismissed or not charged pursuant to this Plea
17 Agreement.

18 **17. Voluntariness of Plea.** Defendant agrees that Defendant has entered into
19 this Plea Agreement freely and voluntarily and that no threats or promises, other than the
20 promises contained in this Plea Agreement, were made to induce Defendant to enter a
21 plea of guilty.

22 **18. Statute of Limitations.** In the event this Plea Agreement is not accepted
23 by the Court for any reason, or Defendant breaches any of the terms of this Plea
24 Agreement, the statute of limitations shall be deemed to have been tolled from the date of
25 the Plea Agreement to: (1) thirty (30) days following the date of non-acceptance of the
26 Plea Agreement by the Court; or (2) thirty (30) days following the date on which a breach
27 of the Plea Agreement by Defendant is discovered by the United States Attorney's
28 Office.

1 19. **Completeness of Agreement.** The United States and Defendant
2 acknowledge that these terms constitute the entire Plea Agreement between the parties,
3 except as may be set forth on the record at the change of plea hearing in this matter. This
4 Agreement binds only the United States Attorney's Office for the Western District of
5 Washington. It does not bind any other United States Attorney's Office or any other
6 office or agency of the United States, or any state or local prosecutor.

Dated this 16th day of January, 2020.


LOREASA JOSEPH MISIPATI
Defendant

Hillier
THOMAS HILLIER
Attorney for Defendant

GL for
TODD GREENBERG
Assistant United States Attorney

THOMAS M. WOODS
Assistant United States Attorney